

A bill for an act

relating to real estate; specifying the rights of a common interest community to take certain action to encourage prompt payment of delinquent assessments; amending Minnesota Statutes 2008, sections 515B.3-102; 515B.3-110.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 515B.3-102, is amended to read:

515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.

(a) Except as provided in subsections (b) and (c), and subject to the provisions of the declaration or bylaws, the association shall have the power to:

(1) adopt, amend and revoke rules and regulations not inconsistent with the articles of incorporation, bylaws and declaration, as follows: (i) regulating the use of the common elements; (ii) regulating the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity, or which may damage the common elements or other units; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the common elements and conduct which may damage the common interest community; (v) regulating the exterior appearance of the common interest community, including, for example, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a unit; (vi) implementing the articles of incorporation, declaration and bylaws, and exercising the powers granted by this section; and (vii) otherwise facilitating the operation of the common interest community;

(2) adopt and amend budgets for revenues, expenditures and reserves, and levy and collect assessments for common expenses from unit owners;

(3) hire and discharge managing agents and other employees, agents, and independent contractors;

(4) institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more unit owners on matters affecting the common elements or other matters affecting the common interest community or, (ii) with the consent of the owners of the affected units on matters affecting only those units;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement, and modification of the common elements and the units;

(7) cause improvements to be made as a part of the common elements, and, in the case of a cooperative, the units;

(8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 515B.3-112;

(9) grant easements for public utilities, public rights-of-way or other public purposes, and cable television or other communications, through, over or under the common elements; grant easements, leases, or licenses to unit owners for purposes authorized by the declaration; and, subject to approval by resolution of unit owners other than declarant or its affiliates, grant other easements, leases, and licenses through, over or under the common elements;

(10) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements, and for services provided to unit owners;

(11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

(12) impose reasonable charges for the review, preparation and recordation of amendments to the declaration, resale certificates required by section 515B.4-107, statements of unpaid assessments, or furnishing copies of association records;

(13) provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;

(14) provide for reasonable procedures governing the conduct of meetings and election of directors;

(15) exercise any other powers conferred by law, or by the declaration, articles of incorporation or bylaws; ~~and~~

(16) exercise any other powers necessary and proper for the governance and operation of the association; and

(17) suspend any right or privilege of a unit owner that fails to pay an assessment, including the unit owner's right to vote and the unit owner's right to seek election as an officer or director of the association, but may not deny a unit owner or other occupant access to the owner's unit or withhold services provided to a unit or to a unit owner if withholding the service would endanger the health, safety, or property of any person.

(b) Notwithstanding subsection (a) the declaration or bylaws may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) Notwithstanding subsection (a), powers exercised under this section must comply with section 500.215.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2008, section 515B.3-110, is amended to read:

515B.3-110 VOTING; PROXIES.

(a) At any meeting of the association an owner or the holder of the owner's proxy shall be entitled to cast the vote which is allocated to the unit. If there is more than one owner of a unit, only one of the owners may cast the vote. If the owners of a unit fail to agree and notify the association as to who shall cast the vote, the vote shall not be cast. ~~Any provision in the articles of incorporation, bylaws, declaration, or other document restricting a unit owner's right to vote, or affecting quorum requirements, by reason of nonpayment of assessments, or a purported violation of any provision of the documents governing the common interest community, shall be void.~~

(b) If permitted by the articles or bylaws, votes allocated to a unit may be cast pursuant to a proxy executed by the unit owner entitled to cast the vote for that unit. The board may specify the form of proxy and proxy rules, consistent with law.

(c) The entire vote on any single issue (except the election of directors), may be by mailed ballots, subject to (i) any prohibition or requirement contained in the articles of incorporation, bylaws, or declaration and (ii) any requirements of the statute under which the association is created. Such a vote shall have the force and effect of a vote taken at a meeting; provided, that the total votes cast are at least equal to the votes required for a

quorum. The board shall set a voting period within which the ballots must be returned, which period shall be not less than ten nor more than 30 days after the date of mailing or hand delivery of the ballots to the owners. The board of directors shall provide written notice of the results of the vote to the members within 30 days after the expiration of the voting period. All requirements in this chapter, the declaration or the bylaws for a meeting of the members, or being present in person, shall be deemed satisfied by a vote taken by mail in compliance with the requirements of this section.

(d) The articles of incorporation or bylaws may authorize class voting by unit owners for directors or on specified issues affecting the class. Class voting may only be used to address operational, physical, or administrative differences within the common interest community. A declarant shall not use class voting to evade any limit imposed on declarants by this chapter and units shall not constitute a class because they are owned by a declarant.

(e) The declaration or bylaws may provide that votes on specified matters affecting the common interest community be cast by lessees or secured parties rather than unit owners; provided that (i) the provisions of subsections (a), (b), and (c) apply to those persons as if they were unit owners; (ii) unit owners who have so delegated their votes to other persons may not cast votes on those specified matters; (iii) lessees or secured parties are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners, and (iv) the lessee or secured party has filed satisfactory evidence of its interest with the secretary of the association prior to the meeting. Unit owners must also be given notice, in the manner provided in section 515B.3-108(b), of meetings at which lessees or secured parties are entitled to vote.

(f) No votes allocated to a unit owned by the association may be cast nor counted toward a quorum.

EFFECTIVE DATE. This section is effective the day following final enactment.